

NOV 09 2010

PTO/SB/61 (07-09)
Approved for use through 07/31/2012. OMB 0851-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)		Docket Number (Optional) 20049.0001USWO
First Named Inventor: <u>Patell, V.M.</u>		Art Unit: <u>1638</u>
Application Number: <u>10/552,887</u>		Examiner: <u>Cynthia Collins</u>
Filed: <u>October 12, 2005</u>		
Title: <div style="border: 1px solid black; padding: 5px; text-align: center;">RICE CONFERRING RESISTANCE TO ENVIRONMENTAL STRESS BY TARGETING MnSO</div>		
Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		
NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.		
The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.		
<p style="text-align: center;">APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.</p> <p>NOTE: A grantable petition requires the following items:</p> <ol style="list-style-type: none"> (1) Petition fee. (2) Reply and/or issue fee. (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate showing of the cause of unavoidable delay. 		
<p>1. Petition fee</p> <p><input checked="" type="checkbox"/> Small entity – fee \$ <u>270.00</u> (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.</p> <p><input type="checkbox"/> Other than small entity – fee \$ _____ (37 CFR 1.17(l)).</p>		
<p>2. Reply and/or fee</p> <p>A The reply and/or fee to the above-noted Office action in the form of <u>an Amendment After Allowance Under 37 CFR 1.312</u> (identify the type of reply):</p> <p><input type="checkbox"/> has been filed previously on _____</p> <p><input checked="" type="checkbox"/> is enclosed herewith.</p> <p>B The issue fee of \$ <u>755</u></p> <p><input checked="" type="checkbox"/> has been filed previously on <u>August 16, 2010</u></p> <p><input type="checkbox"/> is enclosed herewith.</p>		

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 36 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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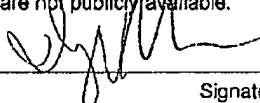
**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)****3. Terminal disclaimer with disclaimer fee**

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature

Douglas P. Mueller

Typed or printed name

P.O. Box 2902

Address

Minneapolis, MN 55402-0902

Address

Nov 9
October 29, 2010

Date

30,300

Registration Number, if applicable

612-455-3800

Telephone Number

- Enclosure ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unavoidable delay
- ☒ Petition Under 37 CFR 1.183 and Declaration

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

- ☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

- ☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

11/9/2010
Date

Jane Schommer

Typed or printed name of person signing certificate

[Page 2 of 3]

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S/N 10/552,887

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Patell, V.M.	Examiner:	Cynthia Collins
Serial No.:	10/552,887	Group Art Unit:	1638
Filed:	October 12, 2005	Docket No.:	20049.0001USWO
Title:	RICE CONFERRING RESISTANCE TO ENVIRONMENTAL STRESS BY TARGETING MnSOD TO THE CHLOROPLAST		

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CERTIFICATE UNDER 37 CFR 1.6(d): I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on *November 9, 2010*.

By: 
Name: Jang Schommer

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONEDUNAVOIDABLY UNDER 37 CFR 1.137(a)

Dear Sir:

This paper accompanies form PTO/SB/64, and includes details as to the reasons why the abandonment of US Application No. 10/552,887 was unavoidable. The reasons are provided as follows.

On May 4, 2010, Examiner Collins contacted a representative of the Applicant advising that she had made a mistake in the Advisory Action that was issued on March 8, 2010. She further advised that because of this mistake, she would provide the Applicant with suggested amendments. She advised that if the suggested amendments were acceptable, she would mail a Notice of Allowance, but also advised that since the statutory period for reply would expire the next day, May 5, 2010, an answer by May 5, 2010 was required; otherwise the application would go abandoned. These circumstances created a sense of urgency for allowance of the case.

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Examiner Collins advised that the suggested amendments would require deposit of seeds for the transgenic strains, but assured the representative of the Applicant that the deposit of seeds could be made at a later stage.

On May 4, 2010, Examiner Collins faxed a draft Examiner's Amendment and Requirement of Allowance Under CFR 1.801-1.809. The following was provided in the draft.

REQUIREMENT OF ALLOWANCE UNDER 37 CFR 1.801-1.809

The Deposit Statement in the specification is deemed in accordance with 37 CFR 1.801-1.809. Since the application is otherwise in condition for allowance except for the needed deposit of seed, and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR 1.809(c)).

As set forth in 37 CFR 1.809(c), Applicant is required to deposit 2500 seeds of the claimed plant within THREE (3) MONTHS of the mail date of this letter; thus the time for making the deposit is on or before the payment of the issue fee. Although the time period for paying the issue fee cannot be extended, the time period for satisfying the deposit requirement may be extended under the provisions of 37 CFR 1.136. Failure to make the needed deposit of 2500 seeds will result in abandonment of the application for failure to prosecute.

Applicant is reminded that once the deposit of seed has been made, information regarding the date of deposit, description of the deposited material including number of seeds deposited, name and address of the depository, and the accession number must be added to the specification in order to comply with 37 CFR 1.809(d). In addition, the claims must be amended to replace the blank" " with the appropriate Accession Number. Amendments to the specification and the claims should be submitted before the payment of the issue fee as an Amendment After Allowance under 37 CFR 1.312. If the amendment is received after the payment of the issue fee, the same should be made under the provisions of 37 CFR 1.312(a) and a petition filed under 37 CFR 1.183 to waive the requirement of 37 CFR 1.312 that the amendment be filed before or with payment of the issue fee; that is, it must be accompanied by a fee in accordance with 37 CFR 1.17(i) and a petition which includes a "showing of good and sufficient reasons why the amendment is necessary and was not earlier presented, and why justice requires waiver of the

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rule." [underlining added]

In view of the discussion with Examiner Collins and the provisions underlined above, Applicant was lead to believe that the rules governing the submission of the seeds prior to issuance would be waived as long as the provisions provided by Examiner Collins were satisfied. Under this pretense and a sense of urgency for allowance imparted by Examiner Collins, Applicant accepted the draft Examiner's Amendment.

On May 17, 2010, a Notice of Allowance was issued by Examiner Collins. The Notice of Allowance included the above provisions. In accordance with the provisions underlined above, Applicant submitted a payment of the issue fee and a one-month petition for extension of time under 37 CFR 1.136 for the deposit of seeds on August 16, 2010. On September 15, 2010, a two-month extension of time was filed, and on October 8, 2010, a three-month petition for extension of time was filed, thereby extending the period of response from August 17, 2010 to November 17, 2010. Applicant also prepared a petition filed under 37 CFR 1.183 to waive the requirement of 37 CFR 1.312 that the amendment be filed before or with payment of the issue fee.

On October 22, 2010, a Notice of Abandonment was mailed. The Applicant was advised by Examiner Collins' supervisor, Examiner Grunberg, that the Notice Abandonment was mailed because a deposit of seeds was not made before or at the time of the issue fee.

The provisions in the draft Examiner's Amendment and Requirement of Allowance Under CFR 1.801-1.809 sent on May 4, 2010 and the Notice of Allowance sent on May 17, 2010 clearly state that the time period for satisfying the deposit requirement may be extended after the payment of the issue fee. The provisions even set forth in detail the requirements that need to be satisfied in the event that an Amendment including the deposit information is submitted after the payment of the issue fee. Thus, the information presented by Examiner Collins provided a reasonable basis to conclude that the requirement of depositing the seeds prior to payment of the issuance fee would be waived if the provisions set forth above were satisfied, and to proceed with accepting the Examiner's Amendment and submitting the seeds after the payment of the issuance fee. Therefore, the abandonment of US Application No. 10/552,887 was unavoidable. Applicant respectfully requests revival of US Application No. 10/552,887.

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Applicant also respectfully requests reimbursement of \$555 for Petition for Three-month Extension of Time. If the application is being considered abandoned, the extensions in fact were not available. Accordingly, Applicant respectfully requests reimbursement of the fee of \$555.

In the event that US Application No. 10/552,887 is revived, Applicant requests favorable consideration of the Petition Under 37 CFR 1.183 to Waive the Requirement of 37 CFR 1.312 submitted with this paper. The Petition Under 37 CFR 1.183 to Waive the Requirement of 37 CFR 1.312 is accompanied with a Declaration and an Amendment including the deposit information in accordance with the provisions set forth above in the Notice of Allowance that was mailed on May 17, 2010. Applicant respectfully submits that diligent efforts were made in pursuing the deposit of the seeds, and therefore, requests waiver of the rule.

Applicant requests confirmation that the Amendment is being entered and the application is proceeding to issue. Any questions or concerns regarding this communication can be directed to the attorney-of-record, Douglas P. Mueller, Reg. No. 30,300, at (612) 455.3804.



Respectfully submitted,

HAMRE, SCHUMANN, MUELLER &
LARSON, P.C.
P.O. Box 2902
Minneapolis, MN 55402-0902
(612) 455-3800

Dated: Nov, 9, 2010

By:

A handwritten signature in black ink, appearing to be "Douglas P. Mueller", written over a horizontal line.

Douglas P. Mueller
Reg. No. 30,300

DPM/ym

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S/N 10/552,887

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Patell, V.M.	Examiner:	Cynthia Collins
Serial No.:	10/552,887	Group Art Unit:	1638
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CERTIFICATE UNDER 37 CFR 1.6(d): I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on November 9, 2010.

By: 
Name: Jang Schorger

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR 1.183 TO WAIVE THE REQUIREMENT OF 37 CFR 1.312

Dear Sir:

Applicants respectfully request the Group Director for Group Art Unit 1638 to waive the requirement of 37 CFR 1.312 that the amendment be filed before or with the payment of the issue fee. In accordance with 37 CFR 1.183 and the "Notice of Allowability" mailed on May 17, 2010, the following is provided:

- A. The petition fee of \$130 under 37 CFR 1.17(i);
- B. A showing of good and sufficient reasons why the amendment is necessary and was not earlier presented is provided as follows:

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The Examiner's Amendment included in the "Notice of Allowability" mailed on May 17, 2010 amended the claims as follows:

23. (Currently amended) The A transgenic indica rice variety designated Godavari
8 produced by the method according to claim 17, representative seed of said
transgenic indica rice variety having been deposited under XXXX Accession
Number XXXX wherein the mature transgenic plants of said rice variety display
increased superoxide dismutase (SOD) activity as compared to a corresponding
plant variety without said expression vector of step (a) in the presence of
environmental stress.

34. (New) A transgenic indica rice variety designated Salween 2, representative seed of said transgenic indica rice variety having been deposited under XXXX Accession Number XXXX.

Thus, the amendment including the deposit information was not earlier presented because such an amendment was required only after the Examiner's Amendment. Furthermore, the amendment to the allowed claims is necessary to comply with the Requirement of Allowance as indicated in the "Notice of Allowability" on May 17, 2010.

C. A showing of good and sufficient reasons why justice requires waiver of the rule is provided as follows:

In the Examiner's Comment regarding the requirement for deposit of biological material in the "Notice of Allowability", it was advised that the claims must be amended to include the deposit information. It was further advised that although the time period for paying the issue fee cannot be extended, the time period for satisfying the deposit requirement may be extended under the provisions of 37 CFR 1.136.

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On August 16, 2010, the issue fee was submitted, along with a petition for one month of extension of time under 37 CFR 1.136 in accordance with the "Notice of Allowability" mailed on May 17, 2010.

Moreover, a detailed timeline of the events relating to deposit of the seeds between May 4, 2010 and October 21, 2010 is provided below. The events of the detailed timeline have been verified by a manager at Avestha Gengraine Technologies Pvt. Ltd. in a Declaration under Rule 1.132 submitted herewith.

On May 4, 2010, a draft Examiner's Amendment was sent by Examiner Collins and the draft Examiner's Amendment was forwarded to a representative of Avestha Gengraine Technologies Pvt. Ltd. (hereinafter, "Avesthagen"; Avesthagen is the assignee of current application) on the same date. On May 5, 2010, the draft Examiner's Amendment was accepted.

Between approximately May 6, 2010 and June 29, 2010, efforts were made by representatives of Avesthagen to locate an appropriate depository.

Initially, MTCC, an International Depositary Authority (IDA) in India, was contacted. However, the representatives of Avesthagen were informed that MTCC does not accept seeds.

Further efforts were made to find alternatives to an IDA under 37 CFR §1.803. The National Bureau of Plant Genetic Resources (NBPGR) was identified as a possible candidate as an alternative to an IDA.

On May 25, 2010, a fax was sent to Examiner Collins asking if NBPGR would be an acceptable depository for the deposit of the seeds.

On June 25, 2010, the Examiner advised that the NBPGR is not on the PTO's approved list of IDAs, and therefore, a deposit with them would not be accepted.

On June 29, 2010, a representative of Avesthagen contacted Ms. Roschelle, an associate specialist from ATCC in the US. Ms. Roschelle provided the list of requirements for the deposit to be made at ATCC.

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On July 2, 2010, an account under Avesthagen was opened as part of the requirements for the deposit. The required forms for the deposit of seeds also were completed and submitted. At this time, Ms. Roschelle was replaced by Ms. Latha Ramakrishnan. World Courier, an international courier service provider, was then contacted regarding the shipment of the seeds from India to ATCC.

On July 13, 2010, ATCC informed a representative of Avesthagen that an import permit is not required for the shipment of the seeds from India to ATCC in the US.

On July 28, 2010, a payment was made to World Courier for the consignment.

On July 29, 2010, documents to World Courier were submitted to clear Indian and US customs.

On July 30, 2010, a payment for the deposit of the seeds was wire transferred to ATCC. World Courier also informed a representative of Avesthagen that a permit is required by the US customs.

On July 31, 2010, World Courier asked a representative of Avesthagen whether the seeds are genetically modified organisms (GMO) or non-GMO. A representative of Avesthagen indicated that the seeds were the former.

On August 2, 2010, customs in India was cleared. However, World Courier needed an import permit for the seeds to clear US customs so they contacted ATCC. ATCC then contacted a representative of Avesthagen regarding the detailed information of the seeds.

Between August 3 and 4, 2010, a representative of Avesthagen submitted the detailed information regarding the seeds to ATCC.

On August 5, 2010, ATCC confirmed that an import permit is not required, but indicated that an import permit letter was required.

On August 6, 2010, US customs informed a representative of Avesthagen that they wanted confirmation from ATCC, and that they would release the seeds only after the confirmation was received. Apparently, attempts were made by the US customs to contact ATCC, but US customs indicated that they were forwarded to voice mail.

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On August 12, 2010, ATCC informed a representative of Avesthagen that ATCC has applied for a USDA Biotech Regulatory Services (BRS) permit, and on a USDA BRS officer's advice, applied for BRS notification and for PPQ 526 on August 6, 2010. The applications include a BRS permit application, BRS notification application and PPQ 526 application. The application numbers are: 10-218-102m (BRS permit application), 10-218-102n (BRS notification application) and P526-100806-009 (PPQ 526 application).

On September 15, 2010, all documents required for shipment from ATCC (the notification from the BRS and the labels) were received, but ATCC posed another requirement of obtaining a phytosanitary certificate.

On September 28, 2010, the accession numbers were received.

Applicants respectfully submit that diligent efforts were made in pursuing the deposit of the seeds, and therefore, request waiver of the rule.

Applicants request confirmation that the Amendment is being entered and the application is proceeding to issue. Any questions or concerns regarding this communication can be directed to the attorney-of-record, Douglas P. Mueller, Reg. No. 30,300, at (612) 455.3804.

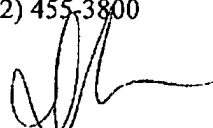


Dated: Nov 9, 2010

DPM/ym

Respectfully submitted,

HAMRE, SCHUMANN, MUELLER &
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Minneapolis, MN 55402-0902
(612) 455-3800

By: 
Douglas P. Mueller
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